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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 306th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 13 November 1997, at 3 p.m.

Chairman: Mr. DIPANDA MOUELLE

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Third periodic report of Argentina

Second periodic report of Portugal

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.306/Add.1.

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Third periodic report of Argentina (CAT/C/34/Add.5): Conclusions and recommendations of the Committee

1. At the invitation of the Chairman, Ms. von Beckh and Mr. Chelia (Argentina) resumed places at the Committee table.

2. The CHAIRMAN invited the Rapporteur for Argentina to introduce the Committee's conclusions and recommendations on Argentina's report.

3. Mr. GONZALEZ-POBLETE read out in Spanish the Committee's conclusions and recommendations on Argentina's report, which read as follows:

"The Committee considered the third periodic report of the Argentine Republic (CAT/C/34/Add.5) at its ... and ... meetings, on 12 November 1997 (CAT/C/SR... and ...), and has adopted the following conclusions and recommendations.

A. Introduction

The Argentine Republic ratified the Convention without reservation on 24 September 1986 and, on the same date, made the declarations provided for in articles 21 and 22.

Like its two predecessors, the third report was submitted within the time limits provided for in article 19 of the Convention and was drafted in accordance with the general guidelines on the form and content of periodic reports. The information it contains were supplemented and updated orally by the representative of the State party at the beginning of the Committee's consideration of the report.

B. Positive aspects

1. The text of article 75, paragraph 22, of the Argentine Constitution, added as part of the 1994 constitutional reform, bestows constitutional rank on the various international human rights instruments, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, and also provides that they should be interpreted as complementary to the rights and guarantees recognized in the first part of the Constitution.

2. Another welcome development is Argentine's ratification of the Inter-American Convention on Forced Disappearance of Persons and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. Those two international instruments contain provisions and lay down obligations whose observance will contribute to the prevention and punishment of torture and the compensation of victims.

3. The bilateral treaties on extradition and judicial assistance recently concluded by the State party contain provisions consistent with article 8 of the Convention.

4. The new Code of Criminal Procedure which entered into force during the period covered by the report contains provisions whose implementation should help to prevent the practice of torture. It contains provisions which are highly important for the achievement of that goal, such as prohibiting the police from taking a statement from a person who has been charged; strictly limiting cases in which the police may detain persons without a court order and obliging them to bring the detainee before the competent judicial authority immediately or within six hours; limiting the length of incommunicado detention; and the stipulating that the fact that an individual is being held incommunicado may under no circumstances prevent him from communicating with his defence counsel before making any statement or before any proceeding requiring his personal participation.

5. The Office of Government Procurator for the Prison System has been established as a mechanism for monitoring observance of the basic rights of prisoners being held in prisons administered by the federal prison service, with the power to receive and investigate complaints and claims, to make recommendations to the competent authorities and to initiate criminal complaints. In that respect, it constitutes an external monitoring mechanism in an environment which, as the facts have shown, lends itself particularly to the commission of excesses, victimization and torture of persons in a vulnerable and unprotected situation.

C. Factors and difficulties impeding the application of the provisions of the Convention

1. The severity of the penalties laid down in article 144 ter of the Penal Code for acts of torture, particularly acts of torture resulting in the death of the victim. Although, technically these provisions give effect to the provisions of article 4 of the Convention, they are weakened by the practical application of them by the courts in that, as the Committee noted in its consideration of a large number of cases, courts very often prefer to charge torturers with less serious offences attracting lighter penalties, which reduces the deterrent effect. The Committee notes that, although there have been many cases of death resulting from torture since the entry into force of the reform of the Penal Code - which introduced this penalty - in only six cases have the culprits been sentenced to life imprisonment, which the law prescribes as the only penalty.

3. The very protracted nature of judicial inquiries into complaints of torture nullify the exemplary and deterrent effect which the criminal prosecution of the perpetrators of such crimes should have. The report refers to cases of torture resulting in death, or of torture aggravated by the clandestine disposal of the victims' remains, as cases in which investigations have still not been completed, six or seven years after the events. Such slow procedures intensify the suffering of dependants,

ultimately causing them to give up their legitimate demands for the punishment of the guilty parties and delaying the moral and material redress to which they are entitled.

D. Subjects of concern

1. The Committee notes a stark contrast between the body of legislation adopted by the State for the prevention and punishment of the practice of torture, which contains provisions that qualitatively and quantitatively meet the requirements of the Convention, and the actual situation as revealed by the information which the Committee continues to receive on instances of torture and ill-treatment by police and prison staff in both the provinces and the federal capital; this seems to indicate a failure on the part of the Argentine authorities to take effective measures to eliminate these reprehensible practices.

2. The information received by the Committee on a number of cases of torture is indicative not only of a lack of effective and diligent police cooperation in judicial inquiries into complaints of torture and ill-treatment, but also of impediments to those inquiries denoting a relatively systematic modus operandi, rather than the occasional failure to cooperate faithfully with the inquiries.

3. The Committee is also concerned about information brought to its attention showing an increase in the number and gravity of instances of police brutality, many of which result in the death or serious injury of the victim and which, while not constituting torture as defined in article 1 of the Convention, represent cruel, inhuman and degrading treatment which the State party is obligated to punish, under article 16 of the Convention.

4. The Committee is also concerned by the fact that, despite the mandatory limitations on the situations in which the police can carry out arrests without a court order, the provisions for the protection of the safety of citizens are infringed by the application of lesser rules or provisions such as police regulations concerning misdemeanours and arrests for identity checks. According to the Committee's information, the arrests made under such provisions represent a very high proportion of the cases of police detention and only an infinitesimal proportion of the arrests were authorized by a court order.

E. Recommendations

1. The Committee recalls that, during its consideration of the preceding report, it informed the representatives of the State party that it would like future information on compliance with the obligations arising out of the Convention to be representative of the situation throughout the country. At that time, the State party pointed out that a register of cases of illegal detention and ill-treatment had been set up in the Office of the Attorney-General to be used, according to the delegation, to record information provided by all courts throughout the country and provide data enabling action for the prevention and punishment of such illegal acts to be made more effective, thus bringing

the general situation under tighter control. The Committee has recently learnt that the register has been done away with and notes that the report suffers from the shortcoming already observed, namely, that it does not adequately reflect the situation throughout the country. The Committee calls on the authorities of the State party to take all necessary measures to remedy that deficiency.

2. Also during its consideration of the previous report, the Committee was informed of a decision by the Attorney-General in October 1991 instructing prosecutors in appeal courts to urge prosecutors in criminal courts of first instance to comply faithfully with their obligations, with particular emphasis on the exercise of their functions in order to exhaust all avenues of inquiry and all means of obtaining evidence during the investigation of the unlawful acts characterized in articles 144 ( ), 144 bis ( ), and 144 ter ( ) of the Penal Code. The Committee notes that, seven years after that decision was taken, investigations into illegal acts proceed at the same slow pace and with the same inefficiency that prompted the decision in the first place. It calls on the competent authorities of the State party to monitor closely the way in which State law-enforcement bodies and officials comply with their obligations, particularly regarding the offences characterized in the above-mentioned provisions of the Penal Code.

3. The Committee calls on the competent authorities of the State party to revise criminal procedure legislation by setting a reasonable time limit for preliminary investigations as, although article 207 of the Code of Criminal Procedure sets a time limit of four months, the unlimited extension provided for in the last paragraph of that article as a special measure appears to be the general rule. In the Committee's view, the undue prolongation of this pre-trial stage represents a form of cruel treatment of the individual concerned, even if he is not deprived of his freedom. The law should also specify a reasonable time limit for pre-trial detention and for the completion of criminal proceedings.

4. The Committee requests the State party to provide it with early replies to those questions raised during the consideration of the report to which no answers or only partial or inadequate answers were given. It also calls on the State party to provide it with statistics on the performance of the obligations arising out of the Convention which are representative of the situation throughout the country, as soon as that information becomes available and without waiting for the submission of the next periodic report."

4. Mr. CHELIA (Argentina) thanked the Committee for the interest it had shown in his country and said that he would not of course be able to reply immediately to the many and complex questions raised in the Committee's conclusions and recommendations. During the Committee's consideration of the report, reference had been made to a number of specific cases which had given rise to considerable judicial activity in Argentina, as described in the third report (CAT/C/34/Add.5). However, the Rapporteur had implied that, in many cases, judges did not impose the prescribed penalties and there had even

been some question of systematic obstruction. Without wishing to take issue with the substance of the Committee's conclusions, he felt that those terms were perhaps not appropriate insofar as they were based on the study of two or three cases. In conclusion, he thanked the Committee for the attention it had given to his country.

5. The CHAIRMAN thanked the Argentine delegation for its cooperation.

6. The Argentine delegation withdrew.

Second periodic report of Portugal (CAT/C/25/Add.10) (continued)

7. At the invitation of the Chairman, Mr. Esteves Remedio, Ms. de Matos, Ms. Alves Martins and Mr. Gomes Dias (Portugal) resumed places at the Committee table.

8. The CHAIRMAN invited the delegation of Portugal to reply to the questions asked by members of the Committee at an earlier meeting.

9. Mr. ESTEVES REMEDIO (Portugal) began by saying that torture was characterized as a crime under articles 243 and 244 of the Portuguese Penal Code as amended in 1995 and that the failure to report acts of torture was also characterized as a crime under article 245 of the Code. The use of torture was also an aggravating circumstance in other crimes such as aggravated homicide and serious and aggravated violation of the person. For all those offences, the Public Prosecutor must automatically institute criminal proceedings, in accordance with the principle of legality in effect in Portugal. In cases of ordinary violation of the person, as referred to in article 143 of the Code, the complaint represented only a condition for proceedings. As soon as a complaint had been made, the Public Prosecutor was obligated to institute proceedings, assisted by the criminal police. Moreover, if the acts in question were committed as a form of torture, it was no longer article 243 which applied, but the above-mentioned articles concerning grave crimes for which criminal proceedings were automatically instituted.

10. Regarding the allegations of ill-treatment and deaths, he said that police excesses were a continuing concern of the Portuguese authorities, which were working ceaselessly to prevent such practices, and to combat and punish them if they occurred, through both criminal and administrative proceedings, including disciplinary measures. The number of such allegations had in fact considerably declined in recent years, although a number of serious cases had come to light.

11. Criminal law was based on humanitarian considerations, with the aim of rehabilitating delinquents. The penalties laid down were generally not as severe as in other justice systems and the rights of the accused were constantly borne in mind. Regarding the imposition of penalties, the practice in Portugal was the aggravation, rather than the accumulation, of penalties. Until 1995, the maximum penalty, even with aggravation, could not exceed 20 years' imprisonment.

12. As to the specific questions asked regarding the status of the public security police, he said that, since 1985, that police force had come under the ordinary civil authorities. Consequently, any acts of torture or ill-treatment committed by its members were systematically punished and entailed the dismissal of the individual concerned. The only actual case in which that had not happened, which was referred to in the Amnesty International report and had been mentioned by the Committee, was due to an amendment of the legislation which had prompted the Supreme Court to overturn a decision by the ordinary court regarding criminal procedure. However, on being informed of that decision, the competent authorities had reactivated disciplinary proceedings, following which the minister concerned had been advised to impose the relevant disciplinary penalty and the individual concerned had been dismissed.

13. Ms. ALVEZ MARTINS (Portugal), referring to the way in which international provisions were incorporated into Portuguese law, said that, under article 8, paragraph 2, of the Portuguese Constitution, "provisions contained in officially ratified or approved international Conventions shall become part of domestic law upon official publication and shall remain in effect as long as they are internationally binding on the Portuguese State". Furthermore, article 16, paragraph 2, of the Constitution provided: "Constitutional and legal provisions concerning fundamental rights must be interpreted and implemented in accordance with the Universal Declaration of Human Rights". Accordingly, in applying the rules governing extradition and deportation laid down in paragraph 33 of the Constitution, the courts must take account of the provisions of the Declaration. Further details were provided in paragraph 120 and 121 of the second periodic report (CAT/C/25/Add.10).

14. There were two stages in the extradition procedure, an administrative phase in which the authorities considered the request to determine whether it was admissible, and the judicial phase in which any request deemed admissible was considered by the courts in adversarial proceedings. If the request was approved, extradition was authorized and the individual concerned returned to the requesting State. If the application was rejected on the grounds, for example, that the offence committed carried the death penalty in the requesting country, the principle of aut dedere aut judicare was applied automatically. Furthermore, as in Portuguese law no one could be sentenced to life imprisonment, an amendment had recently been made to the constitutional provisions governing extradition, so that the extradition of a person who had committed an offence attracting life imprisonment was authorized only if the requesting State undertook expressly not to impose that sentence.

15. Under article 3 of the Constitution and asylum legislation, any asylum seeker arriving in Portugal was immediately placed under the protection of the authorities. That protection was withdrawn only if the application was very quickly shown to be fraudulent or groundless, or if the applicant had made a similar application in another country. Anyone fulfilling the necessary conditions was entitled to all legal guarantees and could be deported only if the application for asylum was refused. The deportation proceedings could of course be appealed before the courts. Where the asylum application was made outside Portuguese territory, for example in the international zone of an airport, it was governed by the provisions of the Schengen Agreement.

16. Under article 197 of the Constitution abolishing military courts, military courts would remain in place until new legislation was adopted. Under the relevant proposed legislation, which was still being worked out, persons committing military offences would in future be tried by specialized courts composed of professional and military judges, with the role of the latter, however, being limited to assessment of the facts. Those courts would be an integral part of the ordinary legal system.

17. Mr. ESTEVES REMEDIO (Portugal), providing clarifications on a number of institutions, said that the Provedor de Justica was elected by a two-thirds majority of the deputies of the National Assembly for a renewable four-year term. He must be of a political persuasion other than that of the parliamentary majority. He was completely independent of the political authorities and acted on his own initiative or on the basis of complaints lodged by members of the public. He had no executive authority, but could submit to any government authority such recommendations as he deemed necessary for the prevention or redress of injustices brought to his attention. The Attorney-General was appointed by the President of the Republic on the proposal of the Government. He served a six-year term. His main tasks were to represent the State before the courts and institute criminal proceedings. He was also responsible for monitoring, with the assistance of the Constitutional Court, the constitutionality of legislation, regulations and administrative decisions.

18. Ms. DE MATOS (Portugal), replying to various questions on the prison system and the treatment of detainees, said that the special security measures sometimes taken by the prison authorities were governed by the Prisons Act and could be applied only in special situations, such as when there was no other way of avoiding the outbreak of serious disturbances in a prison or preventing detainees from escaping. They must never be used for disciplinary purposes. One such measure, confinement in a special cell, required a decision by the prison governor and must not be imposed for more than one month. When the confinement period exceeded 15 days, the approval of the Director-General of Prisons was needed. Prisoners placed in special cells were under continuous medical supervision. If, for reasons relating to the prisoner's mental or physical health, the doctors felt that the confinement should be terminated, they submitted a report to the prison governor, who generally was guided by their proposals. According to a Prisons Administration circular issued on the basis of a specific recommendation of the European Committee for the Prevention of Torture, persons placed in special cells were entitled to one and a half hours of exercise in the open air each day. They also enjoyed full guarantees against wrongful treatment and were, inter alia, entitled to complain to the inspectors of the Prisons Administration, most of whom were magistrates, and to appeal to the European Commission of Human Rights. The use of physical force was governed by articles 122 et seq. of the Prisons Act. Any use of such force must be justified in a report. Portuguese law authorized the use of force in extreme cases involving the health and, in particular, the forced feeding of detainees. In practice, however, it had never been necessary to use such methods, which had been repudiated by the Medical Association.

19. In recent years, training programmes for prison warders had been improved and increasing emphasis placed on human rights and, in particular, on

the provisions of international instruments and the functions of treaty monitoring bodies, including the Committee against Torture, the European Committee for the Prevention of Torture and the European Commission of Human Rights. Moreover, on arrival at a prison, prisoners were immediately informed of their rights.

20. A number of specific measures had also been taken regarding health care, correspondence and the opening of cells at night which had recently been taken to improve conditions for prisoners.

21. Ms. ALVES MARTINS (Portugal) said that the Code of Criminal Procedure drew a clear distinction between detention and pre-trial detention, which lasted not more than 48 hours, whereupon the detainee must be brought before a judge who was alone authorized to say whether the legal conditions existed to extend the detention. The time limits for pre-trial detention were stipulated in article 215 of the Code of Criminal Procedure. Further details were contained in paragraph 172 of the second periodic report. Throughout the proceedings, the accused was entitled to the assistance of a lawyer. The law indicated clearly those cases in which an individual could be charged, i.e. when an allegation had been made against him, when a pre-trial examination of him had been conducted, when he had to make statements to the judicial police in connection with an inquiry, when he was subject to an enforcement measure or pecuniary bond or when he must be placed in pre-trial detention so that he can be brought before a court within 48 hours.

22. The law stipulated the cases in which the assistance of a lawyer was mandatory during the questioning of a detainee who had been charged, namely, where the detainee was a deaf-mute, illiterate, a minor or unable to speak Portuguese.

23. Ms. DE MATOS (Portugal) said that over the past 10 years, 3 amnesties had been declared, 2 for minor offenders and the third for the members of a terrorist group which had been active from 1980 to 1984. The medical code of ethics was a set of rules adopted by the National Medical Ethics Council. Any doctor who failed to observe those rules could be held liable, as well as criminally responsible in cases where non-observance of the rule constituted a criminal offence. The National Council of Ethics in Life Sciences was an independent body of the Office of the President of the Council of Ministers set up by an act of 1990 for the systematic study of all moral issues raised by scientific advances in biology and medicine. Every year, it had to report on the application of new scientific technology and make recommendations. The Council, whose President was appointed by the Prime Minister, consisted of leading figures in the humanities and social and life sciences and six eminent figures representing the main ethical and religious schools of thought in Portugal. There were also local ethics committees in almost 90 per cent of hospitals and in numerous higher education establishments.

24. With regard to the national register of persons not wishing to donate their organs after their death, the solution finally adopted had been highly controversial and had given rise to extensive public debate in Portugal. Specific groups, particularly religious ones, had expressed their concern in that connection. A doctor declaring a person to be dead could not be directly or indirectly involved in the use of the organ.

25. Ms. ALVES MARTINS said that inquiries were being conducted into the cases of children who had been subjected to police brutality on the island of Madeira. They were being conducted by the Inspectorate-General of Internal Administration, under the supervision of a public prosecutor. Regarding the other cases mentioned, inquiries had reached the following stages: in the Santana case, a second administrative inquiry had been launched on the decision of the Director of Prisons and a complaint had been lodged with the Public Prosecutor; inquiries were under way in the Teives and Guerreiro cases; in the latter case, an administrative inquiry was also being conducted by the Office of the Attorney-General. A ruling was pending in the Almado case and the investigation of the Santos case had been completed, with two police officers being sentenced, although for acts not connected with the death of the young Santos. In the Rosa case, three members of the Republican National Guard had been dismissed and the State had spontaneously recognized its responsibility and compensated the family. In the Monteiro case, a police officer had been sentenced to two years and seven months' imprisonment and his dismissal had been called for. In cases of police violence, investigations were always carried out and the penalties pronounced were always executed.

26. The CHAIRMAN thanked the Portuguese delegation for its detailed replies to the questions asked by members of the Committee.

27. Mr. SORENSEN thanked the Portuguese delegation for its cooperation. He asked Portugal to make a further contribution to the United Nations Voluntary Fund for Victims of Torture, as it had done in 1995. Such gestures always had great symbolic value.

28. Mr. PIKIS, returning to the question of complaints of ill-treatment and the action taken on them, with reference to the figures given in the tables in paragraph 82 of the report, noted that proceedings were still under way in the case of 3 complaints made in 1990 and that, out of 38 complaints, only one had led to the sentencing of a member of the army and only 2 to disciplinary measures; he would like to know the reason for that state of affairs.

29. Ms. DE MATOS (Portugal) said that the statistics regarding complaints had been updated for 1995 and 1996 and would be made available to the Committee. Regarding the penalties applicable, the maximum penalty was 25 years' rigorous imprisonment. In that connection, it should be remembered that the Portuguese courts had a tradition of humanity and equity.

The first part (public) of the meeting rose at 5 p.m.

30. The delegation of Portugal withdrew.